

PATENT COOPERATION TREATY

From the
INTERNATIONAL SEARCHING AUTHORITY

To:

see form PCT/ISA/220

PCT

WRITTEN OPINION OF THE INTERNATIONAL SEARCHING AUTHORITY (PCT Rule 43bis.1)

Date of mailing
(day/month/year) see form PCT/ISA/210 (second sheet)

Applicant's or agent's file reference
see form PCT/ISA/220

FOR FURTHER ACTION

See paragraph 2 below

International application No.
PCT/JP2004/014135

International filing date (day/month/year)
21.09.2004

Priority date (day/month/year)
22.09.2003

International Patent Classification (IPC) or both national classification and IPC
C08L23/12, B32B27/32

Applicant

SHOWA DENKO PLASTIC PRODUCTS CO., LTD.

1. This opinion contains indications relating to the following items:

- Box No. I Basis of the opinion
- Box No. II Priority
- Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- Box No. IV Lack of unity of invention
- Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- Box No. VI Certain documents cited
- Box No. VII Certain defects in the international application
- Box No. VIII Certain observations on the international application

2. FURTHER ACTION

If a demand for international preliminary examination is made, this opinion will usually be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA"). However, this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of three months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the ISA:



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**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

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Box No. I Basis of the opinion

1. With regard to the **language**, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.
 - This opinion has been established on the basis of a translation from the original language into the following language , which is the language of a translation furnished for the purposes of international search (under Rules 12.3 and 23.1(b)).
2. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:
 - a. type of material:
 - a sequence listing
 - table(s) related to the sequence listing
 - b. format of material:
 - in written format
 - in computer readable form
 - c. time of filing/furnishing:
 - contained in the international application as filed.
 - filed together with the international application in computer readable form.
 - furnished subsequently to this Authority for the purposes of search.
3. In addition, in the case that more than one version or copy of a sequence listing and/or table relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.
4. Additional comments:

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Box No. II Priority

1. The following document has not been furnished:

- copy of the earlier application whose priority has been claimed (Rule 43bis.1 and 66.7(a)).
- translation of the earlier application whose priority has been claimed (Rule 43bis.1 and 66.7(b)).

Consequently it has not been possible to consider the validity of the priority claim. This opinion has nevertheless been established on the assumption that the relevant date is the claimed priority date.

2. This opinion has been established as if no priority had been claimed due to the fact that the priority claim has been found invalid (Rules 43bis.1 and 64.1). Thus for the purposes of this opinion, the international filing date indicated above is considered to be the relevant date.

3. It has not been possible to consider the validity of the priority claim because a copy of the priority document was not available to the ISA at the time that the search was conducted (Rule 17.1). This opinion has nevertheless been established on the assumption that the relevant date is the claimed priority date.

4. Additional observations, if necessary:

see separate sheet

**Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or
industrial applicability; citations and explanations supporting such statement**

1. Statement

Novelty (N)	Yes: Claims	
	No: Claims	1-18
Inventive step (IS)	Yes: Claims	
	No: Claims	1-18
Industrial applicability (IA)	Yes: Claims	1-18
	No: Claims	

2. Citations and explanations

see separate sheet

Box No. VI Certain documents cited

1. Certain published documents (Rules 43bis.1 and 70.10)
and / or

2. Non-written disclosures (Rules 43bis.1 and 70.9)

see form 210

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Box No. VII Certain defects in the international application

The following defects in the form or contents of the international application have been noted:

see separate sheet

Box No. VIII Certain observations on the international application

The following observations on the clarity of the claims, description, and drawings or on the question whether the claims are fully supported by the description, are made:

see separate sheet

Re Item II

Priority

In view of the fact that it appears that the present invention is already disclosed in its entirety in an earlier application (WO2004/071375 (D1)) in the name of the applicant, it appears that the presently claimed priority is not valid. However, in view of the many parameters present in present independent claim 1, a comparison with D1 is difficult. Similar objections can be made w.r.t documents D2 and D3.

Re Item V

Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

The following documents are mentioned for the first time in this written opinion; the numbering will be adhered to in the rest of the procedure:

- D1: WO-A-2004/071375
- D2: EP-A-0708146
- D3: WO-A-03/055943
- D4: EP-A-1236769

Novelty:

Document D1:

Document D1 discloses (cf. the claims; page 19, paragraphs 3, 4; page 34, final paragraph; the examples) a medical container which is a single layer or multilayer molded article. The container comprises a layer containing a propylene resin and an ethylene alpha-olefin copolymer. The propylene resin comprises a polypropylene component and an ethylene-propylene copolymer elastomer. According to Table 1, the compositions of the various components are according to the requirements of present claim 1.

In view of the many parameters in present claim 1, a proper comparison with D1 cannot be made, but in view of the fact that the same materials are used in D1 and in the present application it is far more likely than not that the structure of D1 will meet the parametric

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requirements. Hence, it appears that the subject-matter of claims 1 - 18 is not novel in view of D1; Article 33(2) PCT.

Document D2:

Document D2, also in the name of the same applicant, discloses (cf. page 2, line 38 - page 3, line 38; page 7, lines 51 - 53; page 9, lines 44 - 49; the claims; the figures; the examples) a molded article comprising a layer containing a propylene composition (A) and an ethylene alpha olefin copolymer (B). The propylene composition (A) is exactly the same as the composition (A) defined in present claim 1; see for instance the figures of D2, which are exactly the same as the figures of the present application. It is noted that the structure of D2 comprises fillers, but according to the present application (page 20) all kind of fillers may be present in the structure of the present invention as well.

In view of the many parameters in present claim 1, a proper comparison with D2 cannot be made, but in view of the fact that the same materials are used in D2 and in the present application it is far more likely than not that the structure of D2 will meet the parametric requirements. Hence, it appears that the subject-matter of claims 1 - 18 is not novel in view of D2; Article 33(2) PCT.

Document D3:

In view of the clarity objection made under session VIII below, it is noted that at present document D3 is also considered to be novelty destroying.

Document D3 discloses (cf. the claims; page 8, last line - page 10, line 9; page 12, paragraph 3 - page 13, paragraph 1; page 18, first paragraph) a medical molded container comprising a layer comprising 40 to 90 mass% of a propylene based polymer and from 10 - 60 mass% of a high density polyethylene. It is explicitly disclosed that the high density polyethylene may be an ethylene alpha olefin copolymer. It is also disclosed (cf. D3, page 18, first paragraph) that a further polymer may be blended with these two components. This third component may be an ethylene alpha olefin elastomer, i.e. a component falling within the wording of component (D) of the present application.

In view of the many parameters in present claim 1, a proper comparison with D3 cannot be made, but in view of the fact that the same materials are used in D3 and in the present

application it is far more likely than not that the structure of D3 will meet the parametric requirements. Hence, it appears that the subject-matter of claims 1 - 18 is not novel in view of D3; Article 33(2) PCT.

Document D4:

Document D4 discloses (cf. the claims; the examples; paragraphs [0030], [0031]) a composition corresponding to the composition defined in present claim 1, which is used for the manufacture of containers for medicines, which are made by molding. The plastomer is an ethylene alpha olefin copolymer. There is no disclosure in D4 of a multilayered structure.

In view of the many parameters in present claim 1, a proper comparison with D4 cannot be made, but in view of the fact that the same materials are used in D4 and in the present application it is far more likely than not that the structure of D4 will meet the parametric requirements. Hence, it appears that the subject-matter of claims 1 - 4, 9 - 11 and 18 is not novel in view of D4; Article 33(2) PCT.

Inventive Step:

In view of the fact that none of the claims of the present application appears to involve novel subject-matter, the subject-matter of claims 1 - 18 does also not appear to be inventive; Article 33(3) PCT.

Industrial Applicability:

The subject-matter of claims 1 - 18 is considered to meet the requirements of Article 33(4) PCT.

Re Item VI

Document D1, already summarised above, is published on 26.08.2004 and has an international filing date of 10.02.2004 and a priority date of 12.02.2003.

Re Item VII

Certain defects in the international application

- 1) To meet the requirements of Rule 5.1(a)(ii) PCT, the documents D1 - D3 should be identified in the description and the relevant background art disclosed therein should be briefly summarised in an objective way.
- 2) To meet the requirements of Rule 6.3(b) PCT the independent claims should be properly cast in the two part form, with those features which in combination are part of the prior art (see documents D1 - D3) being placed in the preamble.

Re Item VIII

Certain observations on the international application

- 1) In present claim 1 component (D) is defined as a copolymer elastomer comprising propylene, ethylene and/or alpha-olefin. Thus, the copolymer may, for instance, only comprise ethylene and alpha-olefin. It is, however, also defined that the propylene content in the copolymer elastomer should be 50 to 85% by mass. It is not clear, how this can be the case if the copolymer only comprises ethylene and alpha-olefin. Hence, it appears that there are contradictions in the terminology used within claim 1, violating the requirements of Article 6 PCT.
- 2) The term "polypropylene" used various times in claim 1 is misleading in that the so-called polypropylene may also be a propylene copolymer (see for instance the description at page 7, first paragraph). The requirements of Article 6 PCT are violated.